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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-630

PAUL HALL, individually and as President, or AL KERR, as Secretary-Treasurer, or EARL SHEPARD, as Vice President, or CAL TANNER, as Executive Vice President of the SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA–ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT,

Petitioner,

v.

JOHN COLE,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

At a membership meeting of the Petitioner labor union[1] at its headquarters in Brooklyn, New York, on August 6, 1962, the Respondent here, John Cole, a

[1] The union—or, more accurately, the Atlantic, Gulf, Lakes and Inland Waters District of the Seafarers International Union of North America—is the only remaining defendant below and hence the only petitioner here. The case has been dismissed against the individual defendant and against the individuals named, in the caption, in their representative capacities.

member of the union, introduced for the consideration of his fellow members a proposed resolution calling for reform of the union's shipping rules (C 12a, 28a). His resolution sought to regularize the union's rotary hiring process so that men would be shipped in proper order; it also sought to end the ruinous, self-defeating policy of "raiding" sister unions, a policy that had engaged the union, to the detriment of its members, in "dog-eat-dog warfare" with sister unions (C 30a-32a). Those objectives were Cole's own reasons for introducing the resolution (Appendix in the Court of Appeals, 115a, 131a, 164a).

Cole's resolution was in proper order. In fact, Paul Hall, who was and is President both of the union and of its parent International, specifically declared that it was in order; in deference to that declaration, the Chairman of the meeting, Paul Hall's brother William, formally ruled it in order (C 28a). At the latter's direction, however, Cole was not allowed to read it to the members and it was read instead by the union's reading clerk (C 12a, 28a). Paul Hall then spoke against the resolution and against Cole personally, calling Cole an "ingrate," accusing him of having violated union rules, and declaring that Cole should have been charged with violations a long time ago (C 28a). Cole was not allowed to speak, neither in answer to Hall's attack on him nor in support of his proposed resolution (C 12a, 33a). His resolution was put to a vote and was voted down by a hand vote, with the officials watching. All the members present except Cole and the seconder of his resolution voted against it.

Cole's resolution contained several "Whereas" clauses, of which two—the eighth and the ninth—were the subject of the charges subsequently filed against him. The eighth "Whereas" clause commented that "moral arguments

fabricated to justify SIU's [the petitioner-union's] interference in interunion beefs are both contradictory and phony," going on to cite as an example a bit of organizational warfare in which Paul Hall, as head of the petitioner-union, had sent strike-breakers, members of a dual organization that he had set up (known as the BME), through the picket lines of the Marine Engineers' Beneficial Association, the established marine engineers' union, and had thereby "stolen" the jobs of the striking engineers by capturing them for the BME (C 27a, 30a). The ninth "Whereas" clause criticized Paul Hall for having begun a pattern of "organizational hijacking" by a raid on a sister union, the NMU, in which Hall (and the SIU) had made offers to the employers to cut the daily wage rate aboard one vessel from $28.46 to $17.50 and the manning-scale from 11 men to 7, and to cut wages aboard another vessel in similar fashion, and reduce the manning-scale from 17 men to 11, all in order to take control of those vessels away from NMU (C 31a). Cole's resolution argued that these were bad practices that in the long run injured the union and its membership.

It is uncontested that what Cole said in the two "Whereas" clauses was factually true.[2]

[2]Cole testified to the underlying facts and his testimony was undisputed. Moreover, the expert witness called by defendants admitted some of the facts (relating to the engineers' dispute) and conceded that such practices were, or hypothetically would be, "a very bad policy" and "self-defeating" (App. in the Court of Appeals, 183a-184a).

As to the facts concerning the eighth "Whereas" clause (i.e., the engineers' dispute), see Appendix in the Court of Appeals, 121a-123a, 127a, 170a-173a, 128a, 183a, and Finding of Fact No. 13 (C 27a). As to the facts in the ninth "Whereas" clause (the cutting of wage and manning-scales), see App. in the Court of Appeals, 44a-45a, 164a-165a, 98a-106a).

On September 4, 1962, the union's Port Agent for the Port of New York, Joseph Di Giorgio, filed a "Charge Sheet" containing charges against Cole based upon the criticisms that were set forth in the eighth and ninth "Whereas" clauses of Cole's resolution. Specifically, the "Charge Sheet" alleged that Cole had violated Article XVI, Section 2, Paragraph (h) of the union's constitution in that, on August 6, 1962, at the Headquarters Meeting,

> ". . . John Cole deliberately and maliciously charged the Officers and Union in the following:
>
> "(a) Raiding a duly certified bargaining agent on contractual jurisdiction.
>
> "(b) Moral arguments fabricated to justify SIU's interference in inter-union's beefs are both contradictory and phony.
>
> "(c) Charged an Officer of this Union with the stealing of jobs from another union." (C 33a).

Paragraph "(a)" of the Charge Sheet referred to the ninth "Whereas" clause (summarized above) of Cole's resolution, which had criticized the raid on a sister union involving the cutting of wage rates and manning scales. Paragraphs "(b)" and "(c)" related to the eighth "Whereas" clause, dealing with the engineers' dispute. (C33a-34a).

Port Agent Di Giorgio's Charge Sheet was presented to a membership meeting on September 4, 1962 and accepted by a majority vote. On October 9, 1962, a Trial Committee, all of whose members had voted at the September 4, 1962 meeting to accept Di Giorgio's charges against Cole, was chosen to try him on those charges. The trial took place after the union's Vice President, Earl Shepard, had closeted himself alone with the Trial Committee for a certain period of time. Cole

submitted to the Trial Committee a written statement admitting that he had introduced the resolution but denying that anything in it constituted malicious vilification. (C 35a). There was no oral testimony.

The Trial Committee made a formal written recommendation that Cole be found guilty and expelled from membership; however, it disclosed no evidence to support a finding that Cole had committed either "malicious vilification" or any other alleged offense. (C 35a). Nevertheless, the recommendation was ratified by the union's membership meetings and took effect as an expulsion. Plaintiff pursued and exhausted all appellate remedies available to him within the union.

After exhausting his intra-union appeals, Cole instituted this action, in the United States District Court for the Eastern District of New York, on December 10, 1963. He promptly sought a preliminary injunction restoring him to membership; however because of the defendants' dilatory tactics described in the affidavits filed January 30, and February 3, 1964, hearing on his motion was delayed until the end of January. It was not until May 27, 1964 that the District Court, *per* Hon. John F. Dooling, Jr., USDJ, granted a preliminary injunction restoring Cole to union membership, conditioned upon his posting a $500 bond. Judge Dooling wrote a clear and concise opinion and made extensive factual findings, which supported the truth of what Cole had said in his challenged "Whereas" clauses and which demonstrated the factual basis for Cole's statements; *cf. Cole v. Hall*, 56 LRRM 2606 (ED. NY. 1964).[3]

---

[3]As regards the lengthy and voluminous argument presented by the union to dispute the accuracy of what Cole had said in his "Whereas" clauses. Judge Dooling observed in his Opinion:

The union required Cole not only to post the $500 bond before it would restore him to membership but also to pay all dues for the period of his expulsion (*cf.* Affidavit, BH Hall, 15th June 1964, filed 6-16-64, p. 5, in the Record). The union moved unsuccessfully to stay the preliminary injunction. After that motion was denied, it appealed to the Court of Appeals. The Court of Appeals unanimously affirmed Judge Dooling's decision: *Cole v. Hall*, 339 F.2d 881 (2nd Cir. 1964).

Filing of a note of issue was delayed at defendants' request until the last day permitted by the District Court's calendar order, so that defendants could serve interrogatories (Affid't, BH Hall, 24th Oct. 1966, filed 10-25-66, in the Record): it was finally filed September 30, 1965. Nearly a year later, in late September 1966, defendants served upon plaintiff 195 separately-numbered interrogatories, each containing several sub-sections, totalling more than 750 questions in all and filling 62 pages of legal-sized paper. Defendants, in October 1966, also moved successfully to remove the case from the trial calendar. After numerous motions and cross-motions, many of the interrogatories were stricken (cf. decision of Judge Rosling, filed 2-2-67). The other interrogatories were answered. Thereafter, the case was restored to the trial calendar. In June 1968, defendants demanded a deposition of the plaintiff; the deposition was taken, consuming three full days in addition to

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"[T]he facts . . . do not support the high tone taken for the union's policy, the Trial Committee's determinations, or the 'subversive' content or tendency of plaintiff's utterances. Rather, the [union's] argument reiterates the union officers' position as if that position was, necessarily and because it was theirs, true. . . ."

(*Cole v. Hall, supra*, 56 LRRM at 2607.)

several briefer sessions. In 1968 and 1969, the case was repeatedly set down for trial but not actually tried until January 1970. During this period prior to actual trial, the union's officers publicly announced their determination to effectuate Cole's expulsion or otherwise to "get rid" of him (Trial Transcript, pp. 850-851).

The case went on trial on January 12, 13, 19, 20 and 21, 1970 before Hon. Jacob Mishler, Chief USDJ. Judge Mishler handed down his decision on May 21, 1971, granting Cole a permanent injunction restoring him to membership rights (and thereby relieving Cole of the necessity any longer to maintain his $500 bond); it also awarded attorneys' fees; *Cole v. Hall*, 80 LRRM 2267, C 10a-21a. The union appealed and Judge Mishler's decision was unanimously affirmed by the Court of Appeals in an Opinion by Mr. Justice Tom C. Clark (Retired) of this Court, sitting as Circuit Judge; *Cole v. Hall*, 462 F.2d 777 (2nd Cir. 1972), C 2a-9a. It is that decision for which certiorari has been granted.

SUMMARY OF ARGUMENT

It is one of the inherent powers of equity to make an award of counsel fees in order to do justice. In particular, where the plaintiff's lawsuit has benefited persons other than himself and where the Court is enabled to make a fee award that will operate to spread the costs of the litigation among the persons benefited, failure to make an award would be to enrich the others unjustly at the cost of the plaintiff.

Here it is obvious that the plaintiff's lawsuit has benefited an entire class of persons, to wit: the union's members. At the time that the suit was brought, though

more than four years after passage of the LMRDA (or Landrum-Griffin Act), with its "Bill of Rights of Members of Labor Organizations," the officers of the petitioner-union believed—and they insist that they believed it in good faith—that they had the lawful power to expel any union member who dared to criticize them or their policies at a membership meeting of the union. It has taken this lawsuit to convince them that union members have rights, rights which they (the officers) are bound to respect. By forcing the officers to respect the rights of members, this lawsuit has conferred a substantial benefit upon every one of the union's members.

In line with established principle, the District Court has equitable power to make an award of attorneys' fees; this case is on all fours with *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939), and *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). Here, as there, the persons benefited by the lawsuit each have an interest in a common fund, in this case the union treasury. (In *Mills, supra*, the common fund was the defendant corporation's treasury; in *Sprague*, supra, it was the proceeds of certain bonds held by defendant banks; in *neither* case was the common fund created by the lawsuit.) A fee award payable out of the common fund is not punitive, neither in fact nor intent; it operates to spread the expenses of the litigation among all the persons benefited by the lawsuit, so that the plaintiff will not, alone, have to bear the full cost of the litigation.

Congress intended that such fee awards would be available to plaintiffs in suits under Section 102 of the LMRDA. For that reason it used the most general possible language: it provided in Section 102 that a union member may sue "for such relief (including injunctions)

as may be appropriate." The sponsors of the Landrum-Griffin bill declared in plain language that the availability of fee awards to Section 102 plaintiffs was necessary in order to effectuate the purposes of the Act. And they were plainly right: Congress has relied upon ordinary union members to enforce the "Bill of Rights of Members of Labor Organizations" by private suit. Such private suits might never be brought or pursued to completion if there were no prospect of a fee award.

The need for such a fee award is made clear by the facts of this case. It has required nine years to reach completion; the defendant union has resisted it by every manner of dilatory tactics known to experienced counsel. The docket sheet in the District Court is already nine pages long. No monetary damages (other than the fee award) have been recovered. The plaintiff has secured a permanent injunction against his wrongful expulsion, but since he has retired from the industry it is obvious that the prospect of such purely injunctive relief would not have induced him to pursue the case to completion. In order that the statutory purposes be vindicated and the rights of all the union's members be protected, there must be reimbursement for the plaintiff-member's litigation expenses.

To require the plaintiff to bear all the expenses of litigation would be an obvious injustice. They should be spread among the persons benefited.

ARGUMENT

I

A FEDERAL COURT, SITTING IN EQUITY, HAS INHERENT POWER TO AWARD ATTORNEYS' FEES WHERE THE DOING OF JUSTICE SO REQUIIRES.

While it is generally true that attorneys' fees are not recoverable in an ordinary civil suit—such, for example, as a personal-injury tort action—it is firmly established that a federal district court, in its sound discretion, through its equity powers, may make a fee award where appropriate. *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Mills V. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). The courts have not hesitated to avail themselves of this inherent power where "overriding considerations indicate the need for such recovery" (*Mills v. Electric Auto-Lite Co., supra*, 396 U.S. at 391-392) or " when overriding considerations of justice seem to compel such a result" (*Fleischmann Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718 (1967)).

Such "overriding considerations" are present when, for example, the plaintiffs are persons of small means, pitted against a powerful labor union, and have been subjected to discrimination or oppression by that labor union; *cf. Rolax v. Atlantic Coastline R.*, 186 F.2d 473, 481 (4th Cir. 1951).

And the courts have, likewise, long held that such "overriding considerations" are present where the law-suit in question, brought by an individual, has conferred substantial benefit upon an identifiable class, and where the nature of the court's subject-matter jurisdiction enables it to make a fee award that will operate to

spread the costs among the members of the benefited class. The power of a federal court sitting in equity to make an award in such a case is "part of the original authority of the chancellor to do equity in a particular situation." *Sprague V. Ticonic Nat'l Bank, supra*, 307 U.S. at 166.

A. The *Mills* Case.

That principle has most recently been re-affirmed by this Court in *Mills v. Electric Auto-Lite Co., supra.* In *Mills*, certain minority shareholders of defendant corporation brought suit to set aside the latter's merger with another corporation, charging that the proxy solicitation for the merger vote was materially misleading and in violation of Section 14(a) of the Securities Exchange Act and of the rules issued thereunder. This Court upheld the District Court's summary judgment determination that the proxy solicitation did violate Section 14(a); it accordingly remanded the case for determination of what relief should be granted.

This Court went on to hold that the plaintiffs were entitled to an interim award of attorneys' fees for the reason that their lawsuit, though as yet incomplete, had rendered a substantial service to the corporation and its shareholders (*Ibid.*, 396 U.S. at 396). In so holding, the Court explored the decisions concerning fee awards where the plaintiff's lawsuit has benefited others in the same manner as himself. The Court noted that in such cases an award may be appropriate because to allow others to benefit from the plaintiff's efforts without contributing to the litigation expenses that produced that benefit "would be to enrich the others unjustly at the plaintiff's expense." *Ibid.*, 396 U.S. at 392.

The *Mills* opinion emphasized that the power to make a fee award is an integral power of an equity court. Indeed, the rule that this power should be exercised where an individual's lawsuit has conferred benefit or a service upon a class was expressly termed "judge-created." The conditions for its effectuation are, first, a substantial benefit resulting from the lawsuit and, second, the court's jurisdictional power to make an award that will operate to spread the costs proportionately among the members of the benefited class. (396 U.S. at 394).

Both conditions were present in *Mills*. First the benefit conferred: that benefit consisted in corporate "therapeutics," in requiring the officers of the corporation to recognize their duty to submit fair and non-misleading material to shareholders in connection with proxy solicitation. It was non-pecuniary in nature: no money was recovered either for the corporation or for its stockholders as a result of the lawsuit. But the lawsuit, in blocking a distortion of the corporation's voting process and in protecting the right of all shareholders to a fair and informed suffrage, conferred a substantial benefit both upon the majority shareholders (who had favored the proposed merger) and upon the minority (who opposed it).

Second, each of the persons benefited by the lawsuit (i.e., the shareholders of the corporation) had a material interest in a common fund, to wit: the corporation's treasury, and that common fund was within the Court's subject-matter jurisdiction. Hence the Court could make an award that would operate to spread the costs of the litigation proportionately among the persons benefited by the lawsuit.

This Court ruled, additionally, that a fee award should not be precluded by the absence of express authorization for such in the particular section of the statute upon which the lawsuit was grounded (*Ibid*, 396 U.S. at 390). Nor should it be precluded by the fact that, in two *other* sections of the same statute, Congress had expressly and specifically provided for fee awards (396 U.S. at 390-391). Moreover, citing *Bakery Workers Union v. Ratner*, 118 U.S.App. D.C. 269, 335 F.2d 691 (1964), the Court emphasized that one should not infer a Congressional purpose to circumscribe the power of a district court to grant a fee award, among other appropriate remedies, from a statute giving broad protection. *Mills, supra*, 396 U.S. at 391.

And again citing *Bakery Workers Union v. Ratner, supra,* this Court in *Mills* went on to say that:

> "... the stress placed by Congress on the importance of fair and informed corporate suffrage leads to the conclusion that, in vindicating the statutory policy, petitioners have rendered a substantial service to the corporation and its sharehholders."

Such a suit as was present in *Mills,* the court added, involves "corporate therapeutics" and furnishes a benefit to all shareholders by establishing rights valuable to all. As a result, the effect of a fee award payable out of the corporate treasury "is not to saddle the unsuccessful party with the expenses but to impose them on the class that has benefited from them. . . ." (Ibid., 396 U.S. at 396, 396-397).

B. The Importance of Fee Awards in Union Democracy Cases.

By citing in support of its holding (396 U.S. at 391, 396) the case of *Bakery Workers Union v. Ratner, supra,*[4] this Court in its *Mills* decision emphasized the substantial similarity between the stress placed by Congress on the importance of protecting the basic democratic rights of union members in Title I of the Landrum-Griffin Act, and the "stress placed by Congress on the importance of fair and informed corporate suffrage" in the Securities Exchange Act. (*Ibid.*, 396 U.S. at 396). Just as the petitioner stockholders in *Mills* were found to have rendered a substantial service to the corporation and its shareholders by vindicating the statutory policy at issue and the rights of other shareholders, so a plaintiff union member (such as John Cole), in vindicating statutory policy regarding union democracy and the rights of other union members, renders a substantial service to the union as an institution and to all of its members.

Senator McClellan made the point clearly when he introduced, in the Senate, the original version of the "Bill of Rights of Members of Labor Organizations." He said:

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[4]In *Ratner*, attorneys' fees were awarded to plaintiff union members in two cases that they had brought against their union under the LMRDA. One of the cases had been brought under Section 501 of the Act, the other brought (as the instant one is brought) under Section 102. *Cf. Ratner, supra,* 118 U.S. App. D.C. at 273, n. 9; 335 F.2d at 695, n. 9. The case brought under Section 102 was *Alvino v. Bakery Workers Union,* 46 LRRM 2812 (D.D.C. 1960). *Cf. Yablonski v. United Mine Workers*, 466 F.2d 424, 430 (D.C. Cir. 1972).

In *Ratner*, fees were awarded for both cases and the amount of the fees was not based upon the funds recovered.

"Mr. President, I testified before the Committee on Labor and Public Welfare generally.... At that time I made the statement,'I believe that if you would give to the individual members of the unions the tools with which to do it, they would pretty well clean house themselves.'

"If we want fewer laws–and want to need fewer laws– providing regulation in this field, we should start with the basic things. We should give union members their inherent constitutional rights, and we should, make those rights apply to union membership as well as to other affairs of life. We should protect the union members in those rights. By so doing we will be giving them the tools they can use themselves."
(II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1102-1103.)

The stress that Congress placed upon the importance of protecting union members' democratic rights and, in particular, their rights of free speech within the union– needs no explanation. A labor union is an organizational expression of industrial democracy. But to be such it must, itself, be democratic. The AFL-CIO has declared, in Ethical Practices Code VI, approved by its Executive Council on May 23, 1957, to this effect:

"Freedom and democracy are essential attributes of our movement. Labor organizations lacking these attributes... are unions in name only. Authoritarian control... is contrary to the spirit, the tradition and the principles which should always guide our movement."

"AFL-CIO Codes of Ethical Practices" (Reissued, May 1958, pp. 44-45.)

When democrary in a union is suppressed and the union is surrendered to its officers' authoritarian

control, the union as such loses its legitimacy as part of the Labor Movement and of society.[5] Still worse,

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[5]The attorney for the Canadian Labor Congress, Maurice Wright, Q.C., made this clear in distinguishing free trade unions from a "hoodlum empire" that had attained dominance over Canadian seamen. He said, inter alia,

> "A trade union is a free association of workers who come together to improve their conditions of work and for other social purposes. . . . Some unions have more effective constitutional safeguards for the preservation of rank-and-file control than others. . . . But if an institution continues to function as a trade union, it must be a free association of workers.
>
> "The Seafarers' International Union of Canada, on the record—on the abundant and uncontroverted evidence before this Commission—is not a free association of workers. It is a captive legion of dragooned and helpless individuals. It is a racket; it is not a union. Like the constitution of the USSR, the constitution of the Seafarers' International Union of Canada makes profuse reference to the principles of democracy. . . . In both cases, behind the facade of the documents, there is the reality of totalitarian rule. . . .
>
> "The Seafarers' International Union is congenitally incapable of making a contribution to the labour movement. It has no ideas. Its leadership is, in the widest sense, unlettered. . . . Their weapons are clubs, not ideas. They are not of the labour movement—they are a growth upon it. . .
>
> " . . . Equally, we submit, that the S.I.U. is not a part of Canadian society—it is a growth upon it. We submit that your Lordship should be prepared to recommend whatever social surgery is necessary to relieve both the trade union movement and society from this growth. There is no place in our social structure for a hoodlum empire which works hand-in-glove with certain shipping companies to the advantage of both and to the disadvantage of the workers and the general public."
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> (*Extract from Hearing of Industrial Commission as to Shipping in the Great Lakes and St. Lawrence River System, March 13, 1963*, Canadian Labour Congress, pp. 5, 9, 33.)

And *cf.* generally: *Report of Industrial Inquiry Commission on the Disruption of Shipping*, July 1963, Queen's Printer, Ottawa, 1963.

it can no longer serve its legitimate purpose and, insofar as it represents an embodiment of Congress's labor relations policy, that policy is negated. Congress, by conferring upon each recognized or certified union the legal status of *exclusive* bargaining representative for all the workers in an administratively-established "bargaining unit" (29 U.S.C. § 159(a); 45 USC §§ 151, et seq.), "has seen fit to clothe the representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents." *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 202 (1944). But if the bargaining representative has freed itself from democratic control by the workers in the bargaining unit, then it is incapable of performing its quasi-legislative function; is more likely to become a vehicle for graft and corruption, for "sweetheart" dealing and betrayal of the workers whom it ostensibly represents—or, in simpler language, it becomes a "racket," a "hoodlum empire." Compare: *Schonfeld v. Raferty*, 271 F.Supp. 128 (SD. NY. 1967), aff'd 381 F.2d 446 (2nd Cir. 1967).

Precisely this problem was the subject of the investigations undertaken by the Select Committee on Improper Activities in the Labor or Management Field, headed by Senator McClellan in the late 1950s. The Committee determined, as a result of its investigations, that the way to drive corruption and racketeering out of the union establishment was by giving protection to rank-and-file democracy within the unions, by giving the union members "the tools they can use themselves," as Senator McClellan put it, the tools with which "they could pretty well clean house themselves," the tools "with which the unions can be

given back to them." And *cf.*: Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2nd Sess. (1958), p. 452.[6]

In response to the McClellan Committee's findings, Congress sought to attack corruption and racketeering by giving the union members those very "tools with which the unions can be given back to them." The most important of those tools, in the life of a labor union as in American society under the First Amendment to the United States Constitution, is the right of an ordinary man or woman, of a "rank-and-filer," to freedom of speech, freedom to criticize the persons in authority over him. And for that reason, Congress carefully guaranteed

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[6]The relationship that his Committee's investigations had revealed between graft, corruption and racketeering, on the one hand, and bureaucratic suppression of union members' freedom of speech within the unions, on the other, was pithily expressed by Senator McClellan when, in giving the Senate some examples of the "offenses" for which union members, under some union constitutions, could be punished, he came to disciplinary provisions making it an offense to criticize or question the motives of union officials. He commented at that point (II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1104):

> " . . . 'criticizing union officials.'
>
> "The officials can say to a member, 'You had better not criticize a union official. You dare not criticize him. If you do, you can be expelled. No wonder they get by stealing so much from their fellow members. Or 'questioning the motives or questioning the integrity of an officer or a member of a committee.'
>
> "In other words, a union member dare not question the integrity of an officer. In some unions, if a member does that, he can be expelled.
>
> "I say we must give the members of the union the tools with which the unions can be given back to them."

to union members freedom of speech both inside and outside the union; it provided that "Every member of any labor organization shall have the right . . . to express *any* views, arguments or opinions; and to express at meetings of the labor organization *his* views . . . upon *any* business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings. . . ." (Section 101(a)(2) of the LMRDA, 29 U.S.C. 411(a)(2).) (Emphasis supplied.)

But use of those "tools" to clean house in the unions requires that members of the unions be protected, and know that they are protected, against organizational reprisals, not only by guarantees contained in a statute but also by recognition of and respect for their basic democratic rights on the part of the persons in power in the unions. When a union member is expelled for introducing a resolution on union policy at a union meeting, the rights of all members are threatened. When the expelled member, by bringing suit, demonstrates that the Congressional guarantee of freedom of expression has genuine meaning, all members gain an increased sense of freedom—and are enabled to use that "tool" for the purposes that Congress intended. One member, by insisting on his right of free speech, wins free speech for all fellow members. All members of this union are today shielded in their exercise of that "tool" by the suit that one member, John Cole, brought and has pursued for more than nine years.

But without the availability of a fee award, there is scant possibility that suits such as John Cole's would be brought and pursued to completion over the strenuous and dilatory opposition of entrenched union officials, armed with the resources of a vast union treasury. As the

Court of Appeals for the Eighth Circuit said in *Johnson v. Nelson*, 325 F.2d 646, 653 (1963), under the circumstances of that case[7] "denial of relief [in the form of counsel fees] . . . would discourage resort to the courts by union members to establish their Title I rights."

The Supreme Court of Oregon, sitting *en banc*, has expressed much the same view. In *Gilbert v. Hoisting & Portable Engineers, Local 701*, 237 Or. 139, 390 P.2d 320, 321 (1964) (*en banc*), the Court said:

> "If those who wish to preserve the internal democracy of the union are required to pay out of their own pockets the cost of employing counsel, they are not apt to take legal action to correct the abuse. The elimination of improper practices in union affairs benefits not only the plaintiff who initiates the suit but also inures to the members of the union and the public as well. The cost of employing counsel should not be visited upon the persons who bring the suit and prevail."

Like the shareholders' suit that was before this Court in the *Mills* case, *supra*, a union member's suit under Section 102 of the LMRDA, brought to vindicate rights guaranteed to union members under the "Bill of Rights of Members of Labor Organizations," is "therapeutic." It helps to maintain the health of our labor relations system.[8] Such "therapeutics" are made possible by the

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[7] In *Johnson*, union members wrongfully expelled had brought suit under Section 102 of the LMRDA for reinstatement and succeeded. The union membership voted to reimburse them their counsel fees but the officers refused to pay the money over. They therefore brought suit under Section 501 of the Act to compel payment of the counsel fees incurred in their Section 102 suit.

[8] Cf. the article by Professor Hornstein that was cited in the *Mills* decision: Hornstein, "Legal Therapeutics: the 'Salvage' Factor

prospect of a fee award. As Judge Levet of the Southern District of New York pointed out in *Cutler v. American Fed'n of Musicians*, 231 Supp. 845, 849-50 (1964),

> "With the possible exception of civil rights litigation, no area is more susceptible to the salutary effects of the exercise of the chancellor's power to award counsel fees without the presence of a fund than litigation involving a member and his union. Primarily, this litigation seeks solely equitable relief and traditionally pits an impecunious group of members against a solvent union with little expectation of a substantial monetary award from which to pay a counsel fee, even a contingent one.

It is hardly surprising, therefore, that the only Court of Appeals that has ever, since passage of the LMRDA, ruled that attorneys' fees may *not* be awarded in Section 102 cases—namely, the Sixth Circuit in *McCraw v. United Association of Journeymen, etc.*, 341 F.2d 705, 710 (1965)—has recently retreated from that position and, in *Sertic v. Cuyahoga, Lakes, etc. Carpenters District Council*, 459 F.2d 579, 583 (1972), indicated its readiness to join those other circuits that have ruled that counsel fees *are* awardable.

Nor is it surprising that five other Circuit Courts of Appeals have ruled that counsel fees may be awarded to plaintiff union members in cases brought under Section

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in Counsel Fee Awards," '69 Harv. L. Rev. 658, 662-663 (1956). Said Professor Hornstein,

> "They [derivative suits] are therapeutic, helping to maintain the health of our corporate system. . . . Every successful suit duly rewarded encourages other suits to redress misconduct and by the same token discourages misconduct which would occasion suit. There can be no doubt that these derivative suits have materially raised the standards of fiduciary relationships and of other economic behavior."

102 of the LMRDA. In chronological order, the five circuits are:

The Third Circuit: *Gartner v. Soloner*, 384 F.2d 348 (1967), cert. den., 390 U.S. 1040 (1968).

The Fifth Circuit: *Burch v. Int'l Ass'n of Machinists*, 454 F.2d 1170 (Dec. 10, 1971).

The Second Circuit: *Cole v. Hall*, 462 F.2d 777 (June 22, 1972) (the instant case).

The District of Columbia Circuit: *Yablonski v. United Mine Workers*, 466 F.2d 424 (August 3, 1972).

The Ninth Circuit: *Kerr v. Screen Extras Guild*, 466 F.2d 1267 (Sept. 20, 1972).

The circuit courts themselves have thus united in holding that fee awards are appropriate in suits brought by union members under Section 102. There is no longer any conflict among them on this issue. And *cf.: Rolax v. Atlantic Coastline R., supra*, 186 F.2d 473 (4th Cir. 1951); *Johnson v. Nelson, supra*, 325 F.2d 646 (8th Cir. 1963); and *Simmons v. Avisco, Local 713*, 350 F.2d 1012 (4th Cir. 1965).

C. The *Fleischmann* Case

The petitioner-union would counterpose against the *Mills* case, *supra*, the slightly older case of *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967), a suit brought by one corporation against another, seeking treble damages plus profits, plus costs, under Section 35 of the Lanham Act, 15 U.S.C. §1117, for infringement by defendant corporation of its trademark. The *Fleischmann* case, however, is inapplicable for the following reasons:

1. Unlike *Sprague* and *Mills, supra, Fleischmann* was not a case in which a lawsuit brought by one member of an identifiable class or group conferred benefits upon the entire class. The plaintiff was the corporation whose trademark was infringed. It (and its shareholders[9]) were the only possible beneficiaries of the litigation. As this Court carefully pointed out in distinguishing the line of cases then most prominently headed by *Sprague, supra* (and since joined by *Mills*), "none of the considerations which supported the exception recognized in Sprague are present here" (*Fleischmann, supra,* 386 U.S. at 720).

2. The statute under which the suit was brought prescribed in intricate detail the remedies for the specific right sued upon. As this Court described them (*Ibid.*, 386 U.S. at 719),

> ". . . in the Lanham Act, Congress meticulously detailed the remedies available to a plaintiff who proves that his valid trademark has been infringed. It provided not only for injunctive relief, but also for compensatory recovery measured by the profits that accrued to the defendant by virtue of his infringement, the costs of the action, and damages which may be trebled in appropriate circumstances."

As the Court noted, this was a setting in which "the legislature ha[s] prescribed intricate remedies" (386 U.S. at 719); the very intricacy of the remedies specifically provided indicates that "Congress intended §35 of the Lanham Act to mark the boundaries of the power to

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[9]If the shareholders of the *plaintiff* corporation be viewed as beneficiaries of the lawsuit, then it must be answered that the costs of the litigation had already been spread among them, by the simple fact of the expenses having been paid out of the plaintiff corporation's treasury. No judicially-directed fee award was necessary to accomplish that spreading.

award monetary relief arising under the Act" (386 U.S. at 721).[10]

That the remedies provided by Section 35 of the Lanham Act are in fact "intricate" needs no elaboration; it is hard to imagine another area of law where the court is directed to award damages, and to increase them up to treble their sum, *in addition to* awarding profits, which it may take as actual profits or as a profit-figure of its own discretionary determination. In exploring the reach of Section 35, we are in an area wholly preempted by the precise statutory formulae. Those formulae mark clear and definite boundaries.

By contrast, there is no "intricacy" at all in the range of Section 102. In providing for "such relief as may be appropriate," Congress explicitly left the determination

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[10]Section 35 of the Lanham Act, 15 U.S.C. §1117, provides as follows:

> "When a violation of any right of the registrant of a mark registered in the Patent Office shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and 32, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty."

of appropriate relief to the district courts, without any limitation whatsoever.

The basic distinction between this case and the *Fleischmann* case is the one first-mentioned: that a union member's suit under Section 102 vindicates rights guaranteed to all union members by the "Bill of Rights of Members of Labor Organizations" (Title I of the LMRDA), and therefore benefits not only himself but all other union members as well, while suits under Section 35 of the Lanham Act benefit only the plaintiff—and confer not even a theoretical benefit upon any other persons among whom a fee award could operate to spread the costs of litigation. But even beyond this, the contrast between the *Fleischmann* situation and the present one remains clear and distinct. Congress, in Section 35 of the Lanham Act, specifically limited the type of relief that could be awarded to a successful plaintiff; it deliberately marked the boundaries of relief. In Section 102 of the LMRDA, however, Congress used deliberately *general* language: it marked no boundaries and left the courts free to "determine whether the special circumstances exist that would justify an award of attorneys' fees" or of any other appropriate relief. (*Cf. Mills v. Electric Auto-Lite Co., supra,* 396 U.S. at 391.)[11]

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[11] A further and even more basic distinction should be pointed out between that line of cases that regards attorneys' fees as an element of compensatory damages and that which places an award of fees within the general powers of a court of equity. The distinction was made clear in *Vaughan v. Atkinson,* 369 U.S. 527, 530 (1952), which, though it belongs to the first (damage) line of cases, cited with approval (and distinguished) the *Sprague* and *Rolax* cases, *supra,* as examples of the second (or equity) line of cases. In *Fleischmann, supra,* the distinction was pointed out again (386 U.S. at 718-719).

II.

IN ENACTING THE L.M.R.D.A. AND ITS "BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS," CONGRESS DID NOT INTEND TO DEPRIVE FEDERAL DISTRICT COURTS OF THEIR INHERENT POWER TO AWARD COUNSEL FEES IN APPROPRIATE CASES.

The Petitioner mistakes the issue raised by it when it argues in its brief (page 10, et seq.) that the language of Section 102 of the LMRDA, or its legislative history, is such as to indicate that Congress did not intend to "authorize" the award of counsel fees in Section 102 cases. For even if its argument to that effect were sound, it would not meet the burden that the Petitioner must carry in this case.

The issue here is not whether Congress intended to confer upon the federal courts a power that the courts would not otherwise possess. The issue, instead, is whether Congress, in enacting the "Bill of Rights of Members of Labor Organizations" as Title I of the LMRDA, intended *to deprive* the federal courts of a power that they already possessed as a concomitant of their role as courts of equity.

Since, in *Fleischmann, supra,* the only genuinely arguable basis for a fee award was the first (or damages) line of cases, the issue was weighed and decided in terms of damages (*cf. ibid.*, 386 U.S. at 721).

On the other hand, the issue raised here derives from the second, or equity, line of cases—namely, that represented by *Sprague, Mills,* and *Rolax, supra.* Where a fee award is made under the general powers of a court of equity in order to spread the costs of litigation among the persons benefited by the litigation, it is not an item of damages; damage-considerations have nothing to do with it.

It has been shown above that a federal court, sitting in equity, has inherent power to award counsel fees to a plaintiff whose lawsuit has helped to effectuate a statutory or other public policy and which has, by so doing, conferred substantial benefit upon the members of an identifiable class.[12] The power of a federal court to make such an award is not dependent upon the presence or absence of an express statutory authorization. It resides in the federal courts in suits brought pursuant to statute *unless* it can be shown that Congress, in providing specific and exclusive remedies, evidenced "a purpose to circumscribe the courts' power to grant appropriate remedies." *Mills v. Electric Auto-Lite Co., supra,* 396 U.S. at 391.

It is clear both from the language of the LMRDA and from its legislative history that Congress had no such circumscribing purpose.

A. The Statutory Text

We look first to the language that Congress itself used in drafting the Act. Section 102 of the Act, 29 U.S.C. 412, provides that a person whose rights under Title I have been infringed "may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

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[12] The instant lawsuit, like the *Mills* suit, has served both these functions. It has vindicated the Congressional policy that every union member shall have freedom "to express at meetings of the labor organization his views . . . upon any business properly before the meeting. . . ." (Section 101(a)(2) of the LMRDA, 29 U.S.C. 411(a)(2)). By vindicating that policy it has provided for the protection of all members of this union.

The broad nature of that grant of jurisdiction is apparent. More all-inclusive words could scarcely be written. Congress plainly did not seek to delimit or narrow the range of relief that a federal court might award to a plaintiff; it appears obvious that its broad grant was not intended to deprive the courts of their inherent power to award whatever traditional forms of relief (including attorneys' fees) they found appropriate.

That conclusion is reinforced by the express terms of the section immediately following (Section 103 of the Act, 29 U.S.C. 413):

> "Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization."

And in addition to the specific savings clause for Title I, set forth in Section 103, *supra,* the LMRDA contains a general savings clause in Section 603(a), 29 U.S.C. 523(a), providing that

> "except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under any Federal law or law of any State."

Thus, the bare language of the Act, both of the section under which suit is brought and of the two separate sections in which Congress saw fit to state that it did not intend to take away any existing rights or remedies, is persuasive evidence that in enacting the LMRDA Congress did not intend to deprive the federal courts of their inherent power to award attorneys' fees.

B. The Legislative History

Congress passed the LMRDA in a "heavy pressure atmosphere" (*Gartner v. Soloner*, 384 F.2d 348, 355 (3rd Cir. 1967), cert. den. 390 U.S. 1040 (1968)). And it did so in a disjointed manner. Congressman Griffin, a few days after the Act became law, referred to it as a "scissors and paste" job. (Address by Robert P. Griffin, Labor Law Section of the Michigan State Bar, Annual Meeting, Sept. 25, 1959, quoted in Smith, The Labor Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 197 (1960).)

The original bill was amended repeatedly and re-amended. The "Bill of Rights of Members of Labor Organizations" was added to the original Kennedy-Ervin bill on the floor of the Senate, then itself amended. After the bill had passed the Senate, the House Committee on Education and Labor took up the lead. The Committee majority proposed a bill sponsored by Chairman Elliott, HR 8342; but a minority on the Committee opposed the Elliott bill and favored, for reasons set forth in their statement of "Dissenting Views" in the Committee's report, the twin bills of Congressmen Landrum and Griffin, H.R. 8400 and H.R. 8401. On the floor of the House the Committee's minority triumphed. The House deleted the entire text of the Elliott bill (H.R. 8342) following its enacting clause and replaced it by the text of the Landrum-Griffin bill, H.R. 8400. With some further changes, the substance of the Landrum-Griffin bill ultimately became enacted as the Labor-Management

Reporting and Disclosure Act of 1959, 29 U.S.C. 401, et seq.[13]

In tracing the legislative purpose through such a history one can, of course, approach confusion. The simplest guide through the maze is to look at what the Congressmen who sponsored the bills that eventually became the LMRDA—and, in particular, at what Congressmen Landrum and Griffin—actually desired and intended. One conclusion that becomes obvious is that there was a total *absence* in Congress of any desire to strip the federal courts of their power to make counsel fee awards in Section 102 cases; instead, the Congressmen who played major roles in formulating the LMRDA as enacted believed strongly that such fee awards *must* remain available to union members suing under Section 102 in order that the basic purposes of the Act might be accomplished. This is shown by the very passages quoted in Petitioner's brief (see esp. pp. 13, 14). It is obvious from those passages that Senator Goldwater, Congressman Griffin, and the other Congressmen (in addition to Griffin) who comprised the minority on the House Committee, strongly *favored* the availability to plaintiffs under Section 102 of broad relief, including counsel fees. They *did not favor* restricting the relief available to such plaintiffs; indeed, they declared that any bill which failed to make fee awards available to such plaintiffs would be "woefully inadequate."

[13] The legislative history of the LMRDA is collected in a two-volume work published by the U.S. Department of Labor in 1960, entitled *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*. Volume I contains the text of the various bills and committee reports involved in that history; Volume II contains the record of the House and Senate debates. The work is cited below in abbreviated form as Leg. Hist. of the LMRDA.

The original Committee bill, H.R. 8342, sponsored by Congressman Elliott and the majority of the House Committee, contained an enforcement clause (also denominated as Section 102) which provided that a person who is aggrieved by a violation of Section 101 and who has exhausted his intra-union remedies "may bring a civil action" in federal district court; as to remedy, it provided that

> "(b) If, upon a preponderance of the evidence after a trial upon the merits, the court finds that a violation of section 101 has occurred, the court shall have jurisdiction to restrain such violation and to grant such other and further relief as may be appropriate."
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> (I Leg. Hist. of the LMRDA 701.)

Congressman Elliott, in describing the intended reach of that clause, told the House (II Leg. Hist. of the LMRDA 1584) that:

> "The court's jurisdiction '* * * to grant such other and further relief as may be appropriate' gives it a wide latitude to grant relief according to the necessities of the case."

Several Republican members of the House Committee on Education and Labor attacked Congressman Elliott's bill as not going far enough. They filed a statement of "Dissenting Views" in the House Report on the Elliott bill, H. Rep. No. 741, in which they set forth their criticism and their intention. At the end of their "Dissenting Views," they declared as follows:

> "For the reasons outlined above, we intend to support on the floor of the House the so-called Landrum-Griffin bill (H.R. 8400 and H.R. 8401). Only in this way, we are convinced, can we enact

legislation adequate to protect the working men and women of America, and the public they serve, against corrupt union officials."

(I Leg. Hist. of the LMRDA 856.)

What were the "reasons outlined above" that cause them to support the Landrum-Griffin bill against the Elliott bill? One of the reasons, and the most relevant here, was concern that the district courts in Section 102 cases should retain the power to award counsel fees to plaintiff union members. In their "Dissenting Views" they stated very forcefully that failure to make such fee awards available to union members who bring suit under Section 102 would be a "most serious inadequac[y]"; their belief that the Elliott bill contained that and other "most serious inadequacies" was precisely their stated reason for rejecting it and favoring the Landrum-Griffin bill (I Leg. Hist. of the LMRDA 853; see page 14 of the Petitioner's brief, where this paragraph of their statement of "Dissenting Views" is quoted). They feared that the Elliott bill, which was backed by the Committee majority, would not allow federal courts to make fee awards to union members. They believed strongly that counsel fee awards should be available. And this, itself, was one of the principal reasons "outlined above" that led them to support the Landrum-Griffin bill.[14]

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[14] Section 102 of the Landrum-Griffin bill, first sentence, read as follows:

"Any person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate."

(See: I Leg. Hist. of the LMRDA 631.)

The views of the nine minority Congressmen concerning the inadequacies of the Elliott bill do not, of course, provide authoritative guide as to what the Elliott bill intended—nor do Senator Goldwater's criticisms of the Senate bill provide authoritative guide as to what the Senate bill intended. (Senator Goldwater, a month before he made the statement in testimony before the House Committee that is quoted in Petitioner's brief (II Leg. Hist. of the LMRDA 1281) had cast the sole vote in the Senate *against* the Senate Bill (II Leg. Hist. of the LMRDA 1257).[15] They spoke as opponents of the Elliott bill and of the Senate bill, expressing their fears that the relief provided by the bills might not be adequate. As this Court pointed out,

> "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of statutory words are in doubt."
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> (*Schwegmann Bros. v. Calvert Corp.*, 341 U.S. 384, 394-395 (1951); And *cf.: Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 288 (1956).

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[15] The Court of Appeals for the Third Circuit, in *Gartner v. Soloner, supra*, 384 F.2d at 352, in analyzing the circumstances underlying Senator Goldwater's testimony, commented as follows:

> "Senator Goldwater's sincere statement did point up the need of enabling a single member to enforce his rights. It did not attempt to analyze the efficacy of the phrase used to cover the relief which might be needed including counsel fees. The Senator's offhand thought was that '* * * the bill does not grant him [a union member suing under Section 102], even where successful in his suit, reasonable counsel fees or other costs.' Leg. Hist., Vol. II, p. 1281. Yet many forms of relief and costs have been recognized under Section 102. . . ." (citing cases).

As to the intendment of the Elliott bill and of the Senate bill one must look to the statements of their sponsors. And they, as Congressman Elliott put it, intended Section 102 to give the courts a "wide latitude" to grant relief to union members

However, the statement of "Dissenting Views" made by the Republican minority of the House Committee (a minority which included Congressman Griffin) does emphasize the concern with which those Congressmen viewed the fee award question: they believed that any labor-reform legislation that failed to make counsel fee awards available to union members suing for relief from infringement of their basic rights would be "woefully inadequate" (I Leg. Hist. of the LMRDA 852). To overcome such inadequacies as that, they opposed the Elliott bill (H.R. 8342) and favored the Landrum-Griffin bill (H.R. 8400).

The nine Republican Committee members, including Congressman Griffin, announced their intention to support the Landrum-Griffin bill, in their statement of "Dissenting Views" (quoted *supra*). And they did precisely what they said they would do. On the floor of the House, every one of those nine Congressmen (including Congressman Griffin) voted to delete the entire text, after the enacting clause, from the Elliott bill (H.R. 8342) and replace it with the entire text of the Landrum-Griffin bill (H.R. 8400). And their proposal carried (II Leg. Hist. of the LMRDA 1691-1692). The bill that passed the House was in all important respects the Landrum-Griffin bill.

Plainly, Congressman Griffin and the others who backed the Landrum-Griffin bill favored the availability to plaintiffs in Section 102 suits of counsel fee

awards. It is also apparent that Congressman Elliott and those who supported his bill favored such availability. So did Senator Goldwater. One is led to ask, who in Congress did *not* favor availability of fee awards in Section 102 suits? Or, who in Congress favored depriving the federal courts of the power to make such awards in Section 102 suits? The answer appears to be: nobody. Petitioner has failed to find a single one. In its brief, Petitioner is able to quote only from persons who wanted to *preserve* to the federal courts in Section 102 cases the power to make fee awards; it can find *nobody* who wanted to take that power away from the courts. In the whole of the Eighty-Sixth Congress it can find nobody at all who favored prohibiting such awards.

C. The Fact That Counsel Fees Are Specifically Provided for in Other Sections Does Not Preclude Fee Awards Under Section 102.

At pages 16-17 of its brief, Petitioner points out that attorneys' fees are specifically provided for in Sections 201(c) and 501(b) of the LMRDA, 29 U.S.C. 431(c) and 501(b). The first of these sections authorizes suit by a member to examine books, records and accounts necessary to verify the financial reports filed by his union with the Secretary of Labor pursuant to Title II of the Act. The second authorizes union members to seek relief for the benefit of the union, to redress violations by union officers of their fiduciary duties, providing that a reasonable part of any moneys recovered for the benefit of the union may be allotted to pay counsel fees. It will be noted that these two sections refer to special situations which of necessity require specific provisions. They do not vest general equity powers in the forum

court. It should also be noted that these are the only sections of the LMRDA that explicitly authorize suit in state as well as in federal courts. State jurisprudence in this area is sketchy and was even more so in 1959; Congress could justifiably assume that a federal court would have no difficulty in making fee awards but could not be equally confident about the courts of all the states. See: Etelson and Smith, "Union Discipline under the Landrum-Griffin Act," 82 Harv. L. Rev., 727, 765-766 (1969).

Petitioner argues that by specifically mentioning counsel fees in Sections 201(c) and 501(b) but not mentioning them specifically in Section 102, Congress intended that they not be available under Section 102. A similar argument was made in *Mills v. Electric Auto-Lite Co., supra.* It was there pointed out that attorneys' fees were specifically provided for in Sections 9(e) and 18(a) of the Securities Exchange Act but were not specifically mentioned in Section 14(a) of the same Act. Hence it was argued in *Mills* that they should not be available in suits under that section. This Court emphatically rejected that argument:

> "We agree with the Second Circuit that the specific provisions in §§9(e) and 18(a) should not be read as denying to the courts the power to award counsel fees in suits under other sections of the Act when circumstances make such an award appropriate, any more than the express creation by those sections of private liabilities negates the possibility of an implied right of action under §14(a)."

The same is obviously applicable here. Not only are counsel fees not specifically provided for in Section 102; the same can be said of monetary damages of all kinds–of compensatory damages for loss of earings,

emotional suffering, etc., as well as punitive damages. Yet it is obvious that Congress intended such relief to be included within the phrase, "such relief as may be appropriate." The Court of Appeals for the Third Circuit, in *Gartner v. Soloner, supra,* 384 F.2d at 353 stated the obvious when it said, "The fact that other sections of the LMRDA specifically call for the awarding of counsel fees in no way controls the legislative intent with respect to Section 102."

In the case of the LMRDA, it is important to ensure that, in construing legislative intent with regard to one section, undue emphasis is not given to the language of other sections. In view of the disjointed or "scissors and paste" way in which the LMRDA as a whole, and especially its "Bill of Rights of Members of Labor Organizations," were put together, one should not expect technical consistency from title-to-title. That is especially true of Title I—the "Bill of Rights of Members of Labor Organizations"—for it was introduced originally as an amendment on the floor of the Senate, was patched and re-written during the course of debate, and adopted without ever being carefully integrated with the rest of the statute, which had not yet been debated.

Professor (subsequently Solicitor General) Archibald Cox put the matter clearly when he stated in an authoritative article:

> "[B]ecause much of the bill was written on the floor of the Senate or House of Representatives and because many sections contain calculated ambiguities or political compromises essential to secure a majority . . ., the courts would be well advised to seek out the underlying rationale without placing great emphasis upon close construction of the words."

Cox, "Internal Affairs of Labor Unions Under the Reform Act of 1959," 58 Mich. L. Rev. 819, 852 (1960).

III.

THE SUBSIDIARY QUESTIONS RAISED BY PETITIONER ARE IRRELEVANT TO THE ISSUE NOW BEFORE THE COURT.

The petitioner-union argues, as subsididary questions, certain other matters which can best be dealt with seriatim under one general heading. They are:

(i) The fact that some unions (not including Petitioner) are small and/or poor;

(ii) the fact that in this case, in declining to award punitive damages, the District Court ruled that plaintiff had failed to make sufficient showing of malice to justify punitive relief;

(iii) the fact that, in its ruling cited under (ii) above, the District Court found that defendants believed that they could punish Cole because of his having introduced a resolution at a union meeting; and

(iv) the possibility that Cole might have been motivated by "political ambitions."[16]

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[16] The "ambitions" referred to are Cole's aspirations to union office—i.e., to an office currently held by one or another of the incumbent officers of this union. Petitioner would suggest that such an aspiration is somehow not in accord with good faith. That very suggestion reveals far more about the prejudices of the union's entrenched officials than it does about the facts of this case. The reality is that there is not now nor has there ever been, at any stage in this case, any question raised as to John Cole's complete good faith in bringing and pursuing his lawsuit, in exhausting his union remedies prior thereto, or in any of the incidents that led to the bringing of this lawsuit. It may be added that the union's effort to cast a cloud on Cole's good faith by asserting that the Court made no specific finding of good faith is patently ridiculous.

An additional question suggested by the second of the two questions stated by Petitioner in its Petition for Certiorari (and subsequently certified for argument in this Court) appears to have been abandoned by Petitioner. That is the question of whether fees should be awarded where no monetary damages have been recovered by the plaintiff. Since Petitioner in its brief makes no mention of that question in its brief, it will not be specifically explored here.

What is most noticeable about all these subsidiary questions is that, to the extent that any of them have any relevance at all to the determination of a fee award, they are matters best addressed to the sound discretion of a district court—and may be presumed to have been disposed of once the district court has exercised its discretion; *cf. Sprague v. Ticonic Nat'l Bank, supra,* 307 U.S. at 164, 167.

However, the four questions raised by Petitioner will each be dealt with below.

A. The Small Size of Some Unions

The Petitioner tells us, correctly, that there exist many unions that are very small in membership and have "limited treasuries" (Petitioner's Brief, pp. 19-21). Petitioner does not assert that it is in that situation; it asserts simply that some unions are—and argues from this that fee awards to reimburse a plaintiff union member under Section 102 should not be made. Secondarily, it argues that small unions sometimes make innocent, or technical, mistakes in their disciplinary proceedings and for that reason, also, there should be no fee awards.

It is obvious that in this case there was no technical or innocent mistake. We will later take up the question of

whether the union's officials believed, in the face of the LMRDA, that they had the lawful right to expel a member for introducing a resolution at a union meeting. It is enough to add that, in addition to the obvious wrongfulness of such an expulsion, in this case there was *no evidence at all* to support a charge that Cole was guilty of "malicious vilification" or of any other offense within the range of the charge sheet filed against him (C 35a). The officers of the union, in short, expelled Cole on no evidence at all, for having dared to oppose them at a union membership meeting. They could not have failed to know that what they were doing was wrongful.

In other words, far from committing some technical or minor error in their explusion of Cole, the officers of the petitioner-union used the facade of a disciplinary proceeding in order to cloak an essentially totalitarian act. The officers' real reason for the proceeding was their desire to silence Cole. They sought to silence him because Cole's charges against them, being true and factually well-supported, were essentially unanswerable.

Nevertheless, we have still not considered the hypothetical situation posed by Petitioner's argument. What if a small union (*un*like Petitioner), being poorly advised or perhaps not advised at all by counsel, were to commit some minor or technical error in an otherwise-proper proceeding? The first answer to such a (hypothetical) question is that international unions exist precisely to provide protection in such matters—and so does the proviso to Section 101(a)(4) of the LMRDA, 29 U.S.C. 411(a)(4), requiring a union member to exhaust reasonable intra-union appeals before bringing suit. By appealing to the international union, the wronged member gives the higher bodies of his union, advised by able counsel, an opportunity to correct the error and make litigation unnecessary.

A second answer is that a fee award in litigation of this sort is made where the nature of the lawsuit—i.e., its attack upon some substantial (and not merely technical) injustice—results in substantial benefit to the plaintiff-member's fellow-members. It is not clear that the hypothetical situation suggested by Petitioner's argument would fit this requirement. At any rate, we may be confident that the District Court, sitting in equity, would fairly weigh the substantiality of the benefit conferred by the litigation in question and, additionally, would give due attention to the particular facts involved in the case, in determining to what extent the plaintiff-member should be reimbursed by his fellow-members for his litigation expenses.

But the short answer to Petitioner's hypothetical argument remains the obvious one: none of the considerations raised by Petitioner is operative here. In this case, the union is neither small nor poor. Its treasury is not "limited." And here there was no mere minor, technical, innocent error committed. Instead, the union's officers deliberately expelled a union member in order to stifle his criticism of them and of their anti-trade union practices. By blocking the expulsion, and by opening up to all members their freedom to openly oppose the union's officers, the plaintiff's lawsuit has conferred a valuable and substantial benefit upon all his fellow members.

B. The Fact That the Evidence of Malice on the Part of the Union's Officers Was Insufficient To Justify Punitive Damages.

The District Court made no formal finding, in connection with the fee award, as to whether in expelling Cole, the union's officers acted with or without malice, nor as to whether the union's officers knew or did not know that they were acting unlawfully. The District Court was plainly right not to do so. For if the award of a counsel fee is to be made in order to spread the costs of the litigation equally or proportionately among the persons benefited by the litigation–i.e., among the members of the Union–then the issue is solely between the plaintiff and his fellow-members. The union is involved in the "spreading" process only as a conduit. And it is of no matter whether the officers of a conduit acted, in committing the wrong that gave rise to the lawsuit, with or without malice.

The District Court did go into the "malice" question, however, in a different context. The plaintiff had demanded punitive damages, based upon an assertion of malice. Measuring this claim against the strict evidentiary test that is suitable for a punitive claim, as opposed to a compensatory one, the Court found proof of malice insufficient (C 38a). In its Opinion, it set forth the meaning of its finding (C 19a) as follows:

"PUNITIVE DAMAGES

"The court finds that the defendants, in good faith, believed that they had a right to charge and discipline the plaintiff for his actions at the meeting of August 6, 1962. Absent a showing of malice, punitive damages are not recoverable. *International*

Bhd. of Boilermakers v. Braswell, 388 F.2d 193 (5th Cir. 1968); *Farowitz v. Associated Musicians of Greater N.Y.,* 241 F. Supp. 895 (S.D. N.Y. 1965)."

It is doubtful that the District Court would have arrived at the same result had it explored the question from the standpoint of a demand for *compensatory* damages. For in such an examination, it would have been compelled to note:

(a) that, as the Court had already found as fact,[17] there was *no evidence* disclosed by the union's Trial Committee to support a finding that Cole had committed any offense embraced within the charges against him (Compare: *Boilermakers v. Hardeman,* 401 U.S. 233, 246 (1971); and

(b) that, in view of the law of New York State and under the LMRDA at the time and since, the union's officers either knew or should have known that they had no lawful right to expel a member for introducing a resolution at a union meeting.

It is suggested, therefore, that these considerations would negate the suggestion that the union's officers were free from malice in expelling Cole—in the event that such a suggestion were deemed relevant to the issue of a fee award.

But a closer look at the considerations which underlie a counsel fee award in this type of case (dealt with under

[17] The Court's formal finding No. 23(i) (at C 35a) is as follows:

"(i) The Committee's recommendation disclosed no evidence upon which a finding of malicious vilification could be sustained.

"The Committee disclosed no evidence to support a finding that the plaintiff's conduct at the meeting of August 6, 1962 was violative of Article XVI, Section 2, Paragraph (h) of the Constitution."

Point I, *supra*) will demonstrate that the question of malice or non-malice on the part of a union's officers has no bearing whatever on the fee award question—any more than the question of malice or non-malice on the part of the officers of the Electric Auto-Lite Company would have had in the *Mills* case, or on the part of the Ticonic National Bank would have had in the *Sprague* case, both *supra*.

The purpose of a fee award is not punitive; it is simply (in cases of this nature) to spread the costs of the litigation among the persons who have benefited from the litigation—namely, the members of the defendant union (in this case) or the shareholders of the defendant corporation (in the *Mills* case) or the other trust-beneficiaries who had claims against the proceeds of the bonds held by defendant banks (in the *Sprague* case). In each instance, there was (or is) a common fund in which every member of the benefited class has a material interest, such that an award against that common fund will operate to spread the costs of the litigation among the members of the benefited class.

Or to put it more simply: as regards the spreading of the costs of litigation by means of a fee award, the defendant (petitioner) union is a mere conduit between the plaintiff, John Cole, and his fellow-members. Of what relevance is it that the officers of the conduit were or were not actuated by malice?

C. The Belief of the Union's Officers as to Their Right To Expel Cole.

The findings mentioned above, concerning the "good faith" beliefs of the defendants, officers of this union, that they could expel Cole for having introduced a

resolution critical of them at a union meeting, have an importance in this case that the petitioner-union fails to note. They indicate the almost last-ditch intransigence with which the entrenched officials of this union have resisted the knowledge that they must respect the democratic rights of union members, such as Cole. For, truly, it is astounding that in the Fall of 1962—more than three years *after* enactment of the LMRDA and more than four years *after* the decision of the Court of Appeals of New York in *Madden v. Atkins,* 4 N.Y.2d 283 (1958),—the officers of this union should still be in a position to assert that they believed "in good faith" that they had the lawful right to expel a member for introducing a resolution at a union meeting critical of them!

It is often difficult, and most unpleasant, to accept the truth—especially a particular truth that threatens one's dominion over other people. The officers of this union found it most unpleasant to accept the truth that, under the LMRDA's "Bill of Rights of Members of Labor Organizations," union members have democratic rights and union officers are bound to respect those rights. Acceptance of that truth threatened—perhaps it still threatens—the authoriarian control which the officers of this union exercise over the union, and over the members of the union.

The officers of this union much preferred to believe that the "rank and file" have no rights that they are bound to respect. So the officers of this union clung to that belief. Even after LMRDA, even after *Madden v. Atkins, supra.* They clung to it so fiercely that a district court was enabled to rule that they actually believed it *in good faith.* It required this lawsuit to force them to

relinquish their belief—and to accept the truth that union members are free to express *any* views, arguments and opinions without fear of expulsion or other reprisal by the union's officers. And no argument is necessary to show that, by forcing the union's officers to accept this truth, this lawsuit has conferred substantial benefit upon every member of the union, and has rendered a valuable service to the union itself.

The value of the service rendered by this lawsuit may be shown by the intransigence, or obstinacy, with which the union's officers resisted the truth about union members' rights prior to the bringing of the lawsuit.

In particular:

1. In 1953, in a lawsuit involving the Pacific Coast District of the Seafarers' International Union of North America (the International of which petitioner union is the Atlantic, Gulf and Lakes district-affiliate, and of which Paul Hall is International President), the Supreme Court of Washington declared that the union and its officers could not lawfully expel a member because of his sharp criticism of the union's officers at a union meeting; *Mahoney v. Sailors' Union*, 43 Wn.2d 874, 264 P.2d 1095; modif. 45 Wn.2d 453, 275 P.2d 440 (1954); cert. den. 349 U.S. 915 (1955). In the *Mahoney* case, the union member had been expelled for accusing the union's officers, at a union membership meeting, of sending members through a sister union's picket lines. The Supreme Court of Washington declared the explusion unlawful and invalid, saying (43 Wn.2d at 879, 264 P.2d at 1097):

> "Whether it be said that he asked a question or made a statement, he did so in the union meeting. He spoke there upon union policies, as a member of the union, to the other

members present. This he should be able to do freely, without fear of expulsion."

The Petitioner-union hires able and experienced counsel; there can be little doubt that its able counsel advised the union's officers of the *Mahoney* decision, especially since that decision involved the union's own West Coast affiliate. Counsel undoubtedly explained the meaning of the decision to the union's officers, and advised them that union members were protected in their rights of free speech. Yet the union's officers refused to learn; as the facts of this case show, they refused to recognize the democratic rights of ordinary members. And, according to the finding quoted above, nine years after the *Mahoney* decision, they still believed that they could expel a member for an exercise of free speech identical to the one at issue in the *Mahoney* case.

2. In May 1958, the Court of Appeals of New York (the State's highest court) decided the case of *Madden v. Atkins, supra,* 4 N.Y.2d 283, 151 N.E.2d 73, involving petitioner-union's sister maritime union, the International Organization of Masters, Mates and Pilots, AFL-CIO. In that case, the sister union had expelled several members, defeated candidates for union office, for publishing "smear sheets" attacking the union's officers. The Court noted that the "smear sheets" were "ardent and hard-hitting campaign literature" and went on to say (4 N.Y.2d at 293; 151 N.E.2d at 78):

> "If there be any public policy touching the government of labor unions, and there can be no doubt that there is, it is that traditionally democratic means of improving their union may be freely availed of by members without fear of harm or penalty. And this necessarily includes the right to criticize current union

> leadership and, within the union, to oppose such leadership and its policies. (See *Polin v. Kaplan*, 257 N.Y. 277, 284, *supra*.) The price of free expression and of political opposition within a union cannot be the risk of expulsion or other disciplinary action. In the final analysis, a labor union profits, as does any democratic body, more by permitting free expression and free political opposition than it may ever lose from any disunity that it may thus evidence."

The *Madden* case established the law and public policy of New York. Surely the union's able counsel advised the union's officers of its meaning. Yet the union's officers refused to learn.

3. In September 1959, the Labor-Management Reporting and Disclosure Act of 1959 became law, guaranteeing to every union member the right (Section 101(a)(2) of the Act, 29 U.S.C. 411(a)(2)),

> "... to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings";

and further providing (Section 609 of the Act, 29 U.S.C. 529) that it shall be unlawful for any labor organization or any officer thereof to fine, suspend, expel or otherwise discipline any member for exercise of any such right. Surely able counsel explained to the officers of the petitioner-union the meaning of these provisions of the LMRDA. Yet the officers refused to learn.

4. In April 1963, while Cole was still exhausting his intra-union appeals, the Court of Appeals for the Second Circuit handed down its decision in *Salz-*

handler v. Caputo, 316 F.2d 445; and later that year certiorari was denied by this Court, 375 U.S. 946. The *Salzhandler* decision established that a union member could not lawfully be disciplined by a union for publishing a leaflet attacking the union's officers, not even where the leaflet contained libelous accusations.

Surely able counsel advised the officers of this union of the *Salzhandler* decision and explained its meaning to them. Yet they refused to learn. The union's officers not only turned down Cole's intra-union appeals; they also refused to restore him to membership until the District Court ordered them to do so in May 1964.

It is obvious, from the obstinacy with which the union's officers resisted the knowledge that they could not lawfully expel a member for his criticism of themselves, that nothing short of this lawsuit could ever have taught them that they must respect the democratic rights of union members. For if able counsel could not teach them, who or what could? If it were not for this lawsuit, in other words, the union's officers would *still*, to this day, "in good faith, believe that they ha[ve] a right to charge and discipline [a member] for his actions at ... [a membership meeting]" in introducing a resolution critical of them and/or of their policies and practices (C,19a).

Thanks to this lawsuit, the union's officers have been compelled to learn, and to recognize, that union members have democratic rights, and that among these rights is the right to speak, to introduce resolutions, etc., critical of the union's officers and their policies. The obstinacy with which the union's officers resisted that knowledge prior to the final decision of the District Court in this lawsuit indicates how necessary this lawsuit was, and how beneficial it has been to the union's members.

D. Cole's "Political Ambitions."

As noted earlier, John Cole's good faith in this proceeding and in his exhaustion of remedies prior to instituting it has not genuinely been questioned—and is beyond question. Similarly, no genuine challenge has been made, or could be made, to his good faith in any other connection. The District Court correctly regarded his good faith as being sufficiently beyond question as to render any finding by the Court pertaining to it unnecessary. And there is no evidence in the record to cast any doubt upon it.

But the union, using the rhetoric of good faith/bad faith, accuses Cole of having been guided, in matters preceding his explusion, by "personal political ambitions." What the union means is that at various times, Cole aspired to office in the union. The implication is that there is something unworthy about a union member aspiring to office in his union. Although such a suggestion can hardly stand scrutiny, it is typical of such entrenched bureaucrats as the officers of this union.[18]

There is no evidence in the record to suggest that Cole, in introducing his resolution at the membership meeting of August 6, 1962, was motivated to any degree by

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[18] Senator McClellan, in describing to the Senate the various "offenses" for which, under then-existing union constitutions, a member could be expelled from his union, came upon one offense defined as "applying for the position of another union man in office." He commented (II Legislative History of the LMRDA, p. 1104):

> "A member had better not do that. The officers have squatters' rights. Members had better not offer any competition. They had better not seek election. They had better not aspire to the presidency or the secretaryship, or they will be expelled or disciplined."

ambition or aspiration for union office. He testified at length as to his actual motivations, and his testimony is undisputed (*cf.*: Appendix in the Court of Appeals, 115a, 131a, 164a). Those motivations are the same as the purposes of the resolution as revealed by its text: Cole wanted to regularize the union's rotary hiring process so that members (including himself) would be shipped in proper order; and he wanted to end the ruinous, self-defeating policy of "raiding" sister unions, and the "dog-eat-dog warfare" that it engendered (C 30a-32a).

The truth of what Cole said in his resolution is likewise undisputed. He testified at length as to the events described in the eighth and ninth "Whereas" clauses of his resolution; his testimony is undisputed (the union neither challenged him on the facts nor introduced any evidence of its own), and it establishes the facts set forth in those clauses. *Cf.*: as regards the eighth "Whereas" clause, Appendix in the Court of Appeals, 121a-123a, 127a, 170a-173a, 128a, 183a, and the Court's finding No. 13 (C 27a); as regards the ninth "Whereas" clause, Appendix in the Court of Appeals, 44a-45a, 164a-165a, 98a-106a. The expert witness called by the union conceded his knowledge of some of these facts and, moreover, conceded that the practices described and criticized by Cole would be a "very bad policy" and "self-defeating" for the union (Appendix in the Court of Appeals, 184a). And *cf.*: *Cole v. Hall*, 56 LRRM 5606 (E.D. N.Y. 1964).

Political motivation did not, according to the evidence, enter into Cole's reasons for introducing the resolution for which he was subsequently expelled. However Cole did, at various times, aspire to union office. This is shown by various handwritten personal letters that he wrote at various times in the course of the 1950s to various

officers and representatives of the union, some of them containing "complaints, grievances and accusations."[19] The letters, of course, were not a basis for Cole's expulsion and are therefore irrelevant to this case, even though the District Court allowed the union (over plaintiff's opposition) to admit them into evidence. Nevertheless, the letters indicate that on August 24, 1954, Cole offered to run for union office on the incumbent's slate (C 11a); they also indicate that during the 1950s Cole became disenchanted with the union's current leadership and its policies, in particular with its practice of signing "sweetheart" contracts. In 1960, Cole actually did run for the office of Headquarters' Rep-representative, but in opposition to the three incumbents holding that post (Trial Transcript pp. 780-781).[20]

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[19] The union bases its argument about "political ambition" upon a finding by the District Court that the "complaints, grievances and accusations were, in part, motivated by the plaintiff's political ambitions for union office." (C 38a). It is not clear whether the District Court intended this finding to refer only to the handwritten letters, all of which were written long before the membership meeting of August 6, 1962 (and which therefore have nothing even remotely to do with this case), or whether it intended the finding to refer as well to the resolution. As noted earlier, however, there is no evidence in the record to suggest the applicability of such a finding to Cole's introduction of the resolution.

[20] The District Court's Opinion, commenting upon the 1954 letter, says that "the plaintiff, at a later date, decided to challenge the defendant, Paul Hall, for office" and that "thereafter" Cole criticized the union and its officers for mishandling money. The evidence reveals that Cole did not run against Paul Hall for office until 1964, after he had been expelled from the union and reinstated as a result of the preliminary injunction issued by the District Court (Trial Transcript, pp. 782-784).

In other words, although the evidence indicates that Cole was not motivated, not even in part, by ambition for union office in introducing his resolution, nevertheless it might easily have happened that he introduced such a resolution as a result of such motivation. We may, therefore, accept *arguendo* the union's assertion that he was so motivated. Plainly, in that event, his case would be in all important respects identical with *Gartner v. Soloner, supra,* 384 F.2d 348 (3rd Cir. 1967, cert. den. 390 U.S. 1040. There, the union member, a candidate for union office and leader of a minority faction within the union, led a group of members in picketing the union's offices four days before the election. They carried picket signs with the legend, "Brennan and Soloner Dictators of Philadelphia." Brennan and Soloner were the union's top officers. After being defeated for office, the union member filed election appeals in which he accused the union's officers of illegally depriving union members of their rights to vote. He was charged, tried and fined for the picketing and for bad faith in his appeals; for both offenses he was suspended from membership for one year. His suit was brought to invalidate the fines and the suspensions. *Cf.: Gartner v. Soloner,* 220 F. Supp. 115, 117 (E.D. Pa. 1963) (granting plaintiff's motion for preliminary injunction). Would it not remain true, as it did in *Gartner,* that the union member's lawsuit, by establishing the right of members to engage in free political campaigning for union office, vindicated Congress's policy of establishing union members' freedom of speech and thereby conferred a substantial benefit upon the union's members?

Or let us consider *Yablonski v. United Mine Workers, supra,* 466 F.2d 424 (D.C. Cir. 1972), in which *the lawsuits themselves* were motivated by the plaintiff's

political ambition for union office. Yablonski had brought four lawsuits designed to advance his candidacy in connection with the union's election. Specifically, the lawsuits sought to assure his access to the union's mailing list for the distribution of campaign literature to members; to assure proper coverage of himself in the union's journal; to win reinstatement as a member of Labor's Non-Partisan League, the union's political arm, and thereby increase the political prestige of his candidacy; and to assure adequate safeguards over the counting of ballots. The District Court had noted that the "primary purpose" of all four lawsuits was to advance Yablonski's candidacy—i.e., his "political ambitions"—for the union's presidency. The Court of Appeals commented that

> "... it is obvious that in virtually all litigation of this character, in the labor field or out, a plaintiff pursues his own interest as well as that of others. The relevant question is whether or not the trouble he takes results in the actual conferring of benefits on others than himself."
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> (*Yablonski v. United Mine Workers, supra*, 466 F.2d at 430.)

Approaching the matter of this light, the Court concluded that the institution of the lawsuits was significantly beneficial to the union and its members, not only in the immediate impact of the results achieved "but in their implications for the future conduct of the union's affairs" (*Ibid.*, 466 F.2d at 431).[21]

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[21] The Court went on to comment:

"Surely few would claim that the results of these litigations have not made the UMW a more democratic union or membership in it a more valuable and dignified status. Certainly no member of Congress who voted for LMRDA would fail to recognize that in this instance the Act worked

Unlike the *Yablonski* case, the present suit was not motivated by "political ambitions." But there can be little doubt that its result, like those of the four *Yablonski* suits, has proved to be significantly beneficial to the union and its members, by its implications for the future conduct of the union's affairs. The union's officers have, at last, been compelled to recognize the democratic rights of the union's members. The union's members now know that they have democratic rights and—perhaps an even more valuable bit of knowledge—that they can secure protection for those rights, and protection against any reprisal for their free exercise of those rights. There can be little doubt that the same considerations that led the courts in *Gartner* and *Yablonski* to make fee awards that would operate so as to spread the costs of the litigation among the members of the union are applicable here. A union member whose lawsuit has conferred such valuable and substantial benefit upon the union and upon all its members should not be made to bear, alone, the full cost of the litigation.

CONCLUSION

The decision of the Court of Appeals for the Second Circuit should be affirmed.

Respectfully submitted,

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just the way it was intended to work, i.e., advancing union democracy by opening up the courts to one directly aggrieved member for the benefit of all." (*Ibid.*, 466 F.2d at 431).